

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

- - - - - x
:
UNITED STATES OF AMERICA :
:
v. : Criminal No. 14-00002-JFM
:
RICHARD LEE, :
:
Defendant. : February 5, 2014
:
- - - - - x Baltimore, Maryland

HEARING

BEFORE THE HONORABLE BETH P. GESNER, Judge

APPEARANCES: MARK CROOKS, Esq.
Office of the United States Attorney
6500 Cherrywood Lane
Suite 400
Greenbelt, Maryland 20770
On Behalf of the Government

JOSH TREEM, Esq.
EMILY LEVINSON, Esq.
Brown, Goldstein, Levy, LLP
120 East Baltimore Street
Suite 1700
Baltimore, Maryland 21202
On Behalf of the Defendant

Audio Operator: Jill Klein

Transcription Company: CompuScribe
5100 Forbes Boulevard
Suite 101
Lanham, Maryland 20706
(301) 577-5882

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

gaw

2

I N D E X

	<u>Page</u>
Court Reads Charges	4
Qualification of the Defendant	6
Argument on Behalf of the Government By Mark Crooks, Esq.	7
Argument on Behalf of the Defendant By Joshua Treem, Esq.	10
Further Argument on Behalf of the Government By Mark Crooks, Esq.	24
Further Argument on Behalf of the Defendant By Joshua Treem, Esq.	27
Comments by the Court	33
Comments on Behalf of the Defendant By Joshua Treem, Esq.	37
Comments on Behalf of Pretrial Services By Alicia LaRue	41
Comments on Behalf of the Government By Mark Crooks, Esq.	42
Ruling of the Court Regarding Detention	45
Court and Third-Party Custodian Re. Responsibilities	48
Court and Defendant Re. Conditions of Release	49

KEYNOTE: "----" indicates inaudible in the transcript
 "*" indicates phonetically spelled in the transcript

gaw

1 P R O C E E D I N G S

2 THE CLERK: -- resumes in session. The Honorable
3 Beth P. Gesner presiding.

4 THE COURT: Please be seated.

5 MR. CROOKS: Good afternoon, Your Honor.

6 THE COURT: Good afternoon, Mr. Crooks.

7 MR. CROOKS: This is United States versus Richard
8 Lee. Mark Crooks for the Government. And it is Case No. JFM-
9 14-02. And the two case agents, Patricia Teckle* and Stacy
10 Bradley, they are actually sitting behind the defense table.

11 THE COURT: Thank you.

12 Good afternoon, Mr. Treem.

13 MR. TREEM: Yes. Good afternoon, Your Honor.

14 Joshua Treem and Emily Levinson on behalf of Richard Lee, who
15 is seated at counsel table to my right.

16 THE COURT: Thank you. Good afternoon to all of
17 you.

18 Mr. Lee, we are --- appearance. And the purpose of
19 this proceeding is to tell you what the charges are, tell you
20 what your rights are, and to discuss your release status
21 pending your next court appearance.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And I gather you have reviewed the
25 superseding indictment with Mr. Lee, Mr. Treem?

gaw

1 MR. TREEM: Yes, Your Honor.

2 THE COURT: I am not going to read the entire
3 indictment to you, Mr. Lee, but I want to make sure you know
4 what the charges in each count are.

5 You are charged in count one of the indictment,
6 superseding indictment, with transportation with intent to
7 engage in criminal sexual activity. The maximum penalty for
8 count one is 15-year minimum mandatory, 30-year maximum term.
9 What that means -- is that correct, Mr. Crook?

10 MR. CROOK: I am sorry. I had put a corrected
11 speedy trial form in front of you, Your Honor. And I am not
12 sure if --

13 THE COURT: Oh. I am looking at the old one. Okay.
14 I stand corrected, Mr. Lee.

15 Count one of the indictment, the maximum term is up
16 to life imprisonment with a ten-year minimum mandatory, \$1
17 million fine, and lifetime supervised release that would follow
18 any period of incarceration.

19 The minimum mandatories that I referred to, in
20 essence, are required minimums that the Court has to sentence
21 you on with some exceptions. And then the maximum allowed is
22 the life, as it relates to count one.

23 Counts two and three. Count two of the indictment,
24 you are charged with a violation of Title 18 Section 2423. I
25 am sorry. Counts two and three in the indictment charge you

gaw

1 with two separate counts of violation of Title 18 of the United
2 States Code Section 2252(a)(2); that is, receipt of child
3 pornography. The maximum penalty for each of those two counts
4 is a five-year minimum mandatory term, a ten-year maximum term,
5 a lifetime supervised release, and a fine each of \$250,000.

6 Count four of the indictment appearing at page eight
7 charges you with aggravated identity theft in violation of
8 Title 18 of the United States Code Section 1028(a). The
9 maximum penalty for that offense is a two-year consecutive term
10 that would be imposed to serve after any other sentence that
11 were imposed.

12 Count five of the indictment charges you with
13 production of a visual depiction of a minor engaged in sexually
14 explicit conduct in violation of Title 18 of the United States
15 Code Section 2251(a). The maximum term for that offense is a
16 15-year minimum mandatory term. The maximum allowed is 30
17 years, a \$250,000, and 5 years of supervised release.

18 And finally, the indictment includes a forfeiture
19 count, which asks that certain property be forfeited to the
20 government. There is no jail time associated with that
21 forfeiture count.

22 Do you understand what the charges are and what
23 maximum possible penalties are in the superseding indictment?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Now, you have the right to remain silent

gaw

1 with respect to the charges. You are not required to make any
2 statements. And if you did, it could be used against you. You
3 also have the right to have an attorney represent you at all
4 stages of the proceedings. And if you cannot afford counsel,
5 counsel would be appointed for you at no cost to you.

6 Do you understand both of those rights, Mr. Lee?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And if I could ask you to please stand
9 and raise your right hand. The clerk is going to swear you in.
10 And I am going to ask you a few questions.

11 (Whereupon, the Defendant was sworn.)

12 THE CLERK: Please state your full name for the
13 record.

14 THE DEFENDANT: Richard Lee.

15 THE CLERK: Thank you.

16 THE COURT: You can be seated, Mr. Lee.
17 Can you tell me your age, please?

18 THE DEFENDANT: Thirty-two, Your Honor.

19 THE COURT: And the year you were born?

20 THE DEFENDANT: 1981.

21 THE COURT: And what is your current address?

22 THE DEFENDANT: 630 South Wolfe Street, W-o-l-f-e,
23 Baltimore, Maryland.

24 THE COURT: Within the last 24 hours, have you had
25 anything to drink or taken any kind of drugs, prescription or

gaw

1 otherwise, that are currently affecting your ability to
2 understand these proceedings?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Do you understand everything so far?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And I gather you have been retained,
7 Mr. Treem.

8 MR. TREEM: Yes, we have, Your Honor, myself and
9 Ms. Levinson.

10 THE COURT: Okay. Very well.

11 So Mr. Lee, we will assume that counsel seated next
12 to you will be representing you going forward, unless we are
13 told otherwise.

14 And what is the Government's position on release?

15 MR. CROOKS: Your Honor, first I want to thank
16 Alicia LaRue, because she gave me the feedback, I think, that
17 she didn't have to give. That was helpful to me today, knowing
18 that Pretrial would take a stance that I informed her was
19 different from what Pretrial is advocating. And that is
20 largely because I had given my word to defense counsel prior to
21 today that if the Defendant would self-surrender and, of
22 course, appear with counsel, and also coupled with the fact
23 that he has known about this investigation for nine months,
24 that the parties have tried unsuccessfully to reach an
25 agreement.

gaw

1 Those two factors principally militated in favor of
2 the Government on today's date agreeing to release, but with
3 conditions. And I think that is probably -- I am anticipating,
4 based on some feedback I got also from Ms. Levinson and
5 Mr. Treem prior to this hearing, that I think that that
6 discussion will undoubtedly go next. And of course, I would
7 like to be heard on that.

8 I do know that --

9 THE COURT: I am not sure I followed you on the last
10 thing you said.

11 MR. CROOKS: Sure. I think we also will have an
12 ultimate disagreement about the conditions of release.

13 THE COURT: Okay.

14 MR. CROOKS: But I am not going to belabor that now
15 until it becomes, I think, a better waypoint to talk about
16 that. But I know that these charges to bring rebuttable
17 presumptions in favor of detention. And undoubtedly, I credit
18 Pretrial for relying on those presumptions, but also factoring
19 all the other things they ---. It is not that we don't agree
20 with a lot of the arguments made by Ms. LaRue on behalf of
21 Pretrial. We certainly do. There is a lot here that does give
22 pause.

23 The Defendant has shown a capability and a
24 willingness to make counterfeit documents. He does have
25 extensive ties out of state. It is not just to Canada, but

gaw

1 also to Korea and to Austria. In addition to that, he travels
2 out of state, which is not unusual certainly for a person of
3 his socioeconomic background. But there are a lot of things
4 that in totality I credit Pretrial for presenting to the Court.

5 But this is one of those cases were, A, I gave my
6 word to the defense that if they self-surrendered that I would
7 not advocate for detention. But also, as I said, they have
8 known about this case for a long period of time. We have had
9 the passport since warrants were executed quite some time ago.
10 And for that, I think there are conditions that could be set
11 that would reasonably ensure his return to court.

12 THE COURT: Do you want to address what you think
13 are appropriate?

14 MR. CROOKS: Yes, Your Honor. I think there are
15 numerous things that are appropriate. I interpret the Adam
16 Walsh Act as mandating, where these charges are here, as
17 mandating electronic home monitoring. I appreciate the fact
18 that before the hearing the defense gave me a couple Second
19 Circuit District Court cases that I have only just had a chance
20 to take a cursory look at. But I don't see them as binding on
21 the Fourth Circuit.

22 And even within the body of the cases themselves,
23 they seem to say that they are going counter to the Eighth and
24 Ninth Circuits that have ruled that the per se requirements of
25 the Adam Walsh Act that mandate electronic home monitoring are

gaw

1 not unconstitutional. So I agree with that.

2 So I think as a foundational stepping off point,
3 electronic home monitoring is a necessity.

4 I also think, based on the nature of the crimes,
5 which involve the possession of child pornography, the creation
6 of child pornography, but also the production of counterfeit
7 documents, as well as the posting of back page ads online to
8 facilitate the first counts in the indictment, all of those
9 things also militate in favor of no internet usage in the home
10 and certainly a third-party custody where there would be active
11 accountability by a third person that could ensure compliance
12 with the obligations to also return to court.

13 I think that essentially what I am advocating for is
14 one tick to the right, if you will, of confinement. That is,
15 pretty much the full line-up of conditions that are not
16 detention, but close near thereto that you can accomplish. And
17 I did discuss some of this with Pretrial prior to coming here
18 today.

19 THE COURT: Okay. Mr. Treem?

20 MR. TREEM: Yes, Your Honor. First, I want, with
21 the Court's permission, I just want to respond to the Pretrial
22 Services recommendation of detention. And I appreciate
23 Mr. Crooks's remarks on that regard.

24 But, first of all, a couple of observations of the
25 report. I think the bottom line is that the reasons on the

1 assessment, page five, of the Pretrial Services report, the
2 reasons, the factors, given for nonappearance just aren't met,
3 even by the body of the two and a half pages of the report.
4 And if the Court will permit me just to go through them
5 quickly.

6 THE COURT: Sure.

7 MR. TREEM: Unverified immigration status. That, it
8 seems to me, seems to be based on the inability of Pretrial
9 Services officers to get a response by now.

10 THE COURT: I think that is right.

11 MR. TREEM: So, I mean, it is not that it is
12 unverified. I mean, Dr. Lee, the father, who is present in the
13 courtroom, was interviewed. He said he was naturalized.
14 Richard is his second son. He is naturalized, too. And so
15 there is no -- I mean, the unverified immigration status as
16 somehow a negative factor, I think, is inappropriate.

17 The nature of the alleged incident offense. Well,
18 with all due respect to the Pretrial Services officer, this is
19 based on the indictment alone, presumably. And she has not had
20 access to obviously the information the Government has, nor
21 information that we have. And I will perhaps address that in a
22 moment. But I think it is fair to say that on a global scale,
23 if you go through the counts of the indictment, it sounds, and
24 I don't mean to belittle the charges at all, but it sounds far
25 worse than it is. And I will get to that in a moment.

gaw

1 Possession of a passport. He doesn't have a
2 passport. It was seized at the time of the search of Mr. Lee's
3 home about ten months ago.

4 Prior foreign travel. That is associated with
5 business. And what is significant about the prior travel is
6 that it was, the most recent trip, which I believe was to
7 Vienna, Austria, was done at a time when Mr. Lee knew that this
8 investigation was ongoing.

9 THE COURT: You all are talking about search
10 warrants and when he knew. Can you give me a time frame on --

11 MR. TREEM: Yes. I believe the search -- Mr. Crooks
12 will certainly correct me if I am wrong. I believe the search
13 of Mr. Lee's home in Baltimore was in March of last year. And
14 it was shortly before that that Mr. Lee traveled overseas and
15 came back from Austrian. His passport was seized along with
16 the computers or computer that allegedly contains the child
17 pornography that is described in the indictment.

18 Significantly, over the course of the ensuing ten
19 months, there has been no indication at all -- and the
20 Government certainly does not contend that there has been --
21 any indication that Mr. Lee has engaged in any criminal
22 activity whatsoever, whether associated with these allegations
23 or something different.

24 So the records to strong foreign ties just is not
25 supported by the record. The business trip was to a startup

gaw

1 company, which is barely in business. Other trips were taken
2 as vacations, as he described to the Pretrial Services officer.
3 There is nothing inherently wrong about that or would suggest a
4 nonappearance.

5 As Mr. Crooks has said, he self-surrendered,
6 reported to the marshals this morning, pursuant to his being
7 advised that there was an arrest warrant, and has been
8 available over the past ten months to counsel. Whenever
9 counsel needed to speak with Mr. Lee, he was available. There
10 is nothing in his record to suggest nonappearance.

11 Discrepant mental history, mental health history. I
12 gather the reference to that is some reference to a discrepancy
13 between what Mr. Lee, the father, described as his
14 understanding of the medication taken by Mr. Lee, the son. But
15 regardless, that hardly -- even assuming that that is an
16 accurate description, it hardly supports a claim that somehow
17 Mr. Lee won't show up when required to do so. And it certainly
18 doesn't seem to me the least bit odd that since the searches
19 and knowledge of this investigation might cause some stress,
20 which might require some medication from time to time, and that
21 is what Mr. Lee reported.

22 Unknown substance abuse history to include prior
23 drug-related arrests. Your Honor, I told Mr. Lee not to answer
24 the question of substance abuse. But since the Pretrial
25 Services officer seems to hold that against him, I feel

1 compelled to explain.

2 At the time of the search warrant, a small amount of
3 a controlled substance was found in the house. Mr. Lee was
4 charged in the state with possession of that drug. The case
5 was stettet. That is his only record. There is no conviction.
6 He was released under cognizance. There is no suggestion that
7 he has been doing anything drug related since. That is the
8 nature and extent of his prior abuse history, if you will.

9 With respect to the danger to the community, which
10 has to be established by clear and convincing evidence, that is
11 even less supported here. And the prior arrest records I
12 talked about. Discrepant mental history I talked about. And
13 the unknown substance abuse history I talked about. But let me
14 talk about the nature and circumstance of the alleged instant
15 offense, if the Court will indulge me.

16 But first, let me back up.

17 The Pretrial Services report does reflect that
18 Mr. Lee has no prior convictions, if you will, even if you want
19 to characterize the possession charge as somehow being a
20 triggering prior record of some kind. He has been gainfully
21 employed. He has substantial family and personal contacts to
22 Maryland. His father and brother are here in the courtroom and
23 have expressed a willingness to act as third-party custodians,
24 if necessary. He is generally in good health other than
25 perhaps the stress that this entire matter has brought to bear

gaw

1 on him. He is a naturalized citizen. And there is nothing to
2 suggest in his record that he is a danger other than the
3 charges. So let me kind of get to those, if the Court will
4 permit me.

5 What is apparent from, I think, even a casual
6 reading of the indictment is that putting aside the charge of
7 receipt of child pornography, all the other charges relate to a
8 single individual, who is identified as T.G. in the indictment.
9 That is the person who is described as a victim.

10 The indictment, what the indictment doesn't say
11 specifically, but which I think can be inferred, is that at the
12 time Mr. Lee met T.G., she was operating as a prostitute in
13 Baltimore. She lied to him about her age, as reflected in some
14 of the introductory paragraphs. Mr. Lee did not know about her
15 true age or what she represented to be her true age until
16 months later. And the significance of that is that he, if you
17 credit the allegations, he would have traveled to Florida with
18 her believing that she was 19 and not 16.

19 The crux of this count, count one, kind of turns on
20 the intent allegedly that Mr. Lee had to engage in sex with her
21 in Florida in violation of Florida law. So that is count one.
22 There is no allegation that Mr. Lee was doing this with anyone
23 else. It was just T.G. And I guess the point is that it is
24 the age issue that triggers the crime, not the character of the
25 relationship, which I think is appropriate to describe as

gaw

1 consensual.

2 There is an allegation that Mr. Lee paid for her
3 services initially, but there is no such allegation of that
4 when they went to Florida. In fact, it is in fact alleged that
5 they continued to have sexual relations there.

6 So I think it is accurate to say, at least based on
7 this indictment, that one could consider that conduct, whether
8 it constitutes a per se violation or a strict liability
9 violation of Florida law, consensual sexual activity. So, you
10 know, whether or not T.G. can be described as a victim is open
11 to, I would say, significant debate.

12 As I indicated earlier, Your Honor, the search and
13 seizure of the computers and documents and the passport took
14 place about ten months ago. Again, Mr. Lee was on notice at
15 that point. Again, there is no allegation that he has done
16 anything untoward or inappropriate since that date. The
17 Government has the instrumentalities of the crime charged.
18 They seized computers. They seized his passport. They seized
19 a camera, which I believe they claim is associated with their
20 production count.

21 Significantly, I think it might be safe to infer
22 that Mr. Lee, because of his education and his ability to be
23 gainfully employed and have some assets, and because he is
24 charged with having produced a false I.D. before, could do it
25 again. That is belied by the fact that he is here. If he were

gaw

1 going to do that, he had every opportunity to do it while the
2 investigation was going on. And the Government is not asking
3 for detention, recognizing that very fact. And I would suggest
4 that there is, from that, there is no evidence that would
5 support by any evidence at all, let alone clear and convincing
6 evidence, that Mr. Lee, in some respects, constitutes a danger
7 to the community.

8 So I would ask the Court not to detain Mr. Lee, but
9 otherwise do what the Bail Reform Act requires, which is to
10 find the least onerous conditions that would provide some
11 assurance that Mr. Lee would report as directed and not
12 constitute a danger to the community.

13 You know, contrary to my brother, Mr. Crooks's,
14 remarks about, you know, one tick to the right of detention
15 being an appropriate determination by the Court, we have some
16 arguments to address in that regard, as well. I don't know
17 whether the Court wants to hear those now or not. I guess it
18 may very well turn on whether you want to detain Mr. Lee or
19 not. But I am happy to address those now, if that is what you
20 wish.

21 THE COURT: I would probably address, because I have
22 to consider whether or not there are conditions of release that
23 adequately address the flight and danger concerns.

24 MR. TREEM: Okay. Fair enough.

25 We gave the Court a couple of cases. And

gaw

1 Ms. Levinson and I have not the opportunity to study them in
2 great detail. But we would, for the record, we would argue
3 that that mandatory language in the Adam Walsh statute that
4 comes at the end of, I guess it is, 3142(c)(b)(xiv), if I
5 remember my roman numerals correctly, is unconstitutional on
6 two bases.

7 One, on its face as a violation of due process,
8 denying Mr. Lee his right to travel without due process, to
9 kind of generalize the argument; and --

10 THE COURT: I could probably make one observation on
11 this front, Mr. Treem. I did read your cases, and I understand
12 there is some case support for that. I have never been on that
13 side of it. But I would say in this particular case, if I were
14 to set electronically monitoring conditions, it would not be
15 because I felt like I was required to by the statute.

16 MR. TREEM: Right.

17 THE COURT: It was because I would believe it would
18 be necessary.

19 MR. TREEM: Okay. All right. Then let me address
20 that, if I could. I will go right to that, because I know the
21 Court is aware of the arguments, as applied and on its face and
22 that kind of stuff.

23 Based on what is before Your Honor and based on the
24 Government's presentation and based on what we contend is very
25 much a lack of the substance of what the Pretrial Services

gaw

1 officer claims is appropriate for detention, we would argue
2 that if the Court is inclined to impose electronically
3 monitoring, that it do it consistent with a curfew, that there
4 is no requirement, based on Mr. Lee's personal situation in
5 which he is, again, gainfully employed and which he can live
6 with his parents, who would act as third-party custodians, that
7 there is any necessity for a 24/7 requirement for electronic
8 monitoring.

9 By the way, I would add here, Your Honor, that in
10 regard to the electronic monitoring a dedicated phone line has
11 already been installed at Mr. Lee's father's residence and is
12 available to be up and running consist with any order that the
13 Court may wish to impose. But --

14 THE COURT: Can I ask a question about which
15 residence you are proposing? I saw in the Pretrial report --

16 MR. TREEM: Silver Spring residence, Your Honor.

17 THE COURT: The Link?

18 MR. TREEM: Yes.

19 THE COURT: Okay. It said an indication of
20 relocating there. So I was not quite sure.

21 MR. TREEM: Yes. It is that -- Dr. Lee, the father,
22 travels extensively. And because of the nature of his work, he
23 is often away from the Silver Spring address for days and
24 actually weeks on end. And so he actually has ownership
25 interest in other locations. But to act as third-party

gaw

1 custodian for his son, he will reside at 2212 Link in Silver
2 Spring, and that is where his son will be, as well.

3 What the report doesn't say is that the father and
4 son -- the son works at the father's business in Columbia on a
5 daily basis. So he can provide the kind of constant assurance
6 and custodial assurance that would otherwise be necessary and
7 needed. Mr. Lee has a full-time job. That should continue.
8 There is no reason why it shouldn't. And electronic monitoring
9 is difficult to live with for any extended period of time.

10 Again, given Mr. Lee's character and conduct
11 throughout this investigative period, we would argue that there
12 is no necessity for the 24/7. Dr. Lee, the father, is prepared
13 to act as the third-party custodian, as we have indicated.
14 Again, the family contacts we think would provide the Court
15 with plenty of assurance. And if you are asking for a more
16 specific definition of the time frame I had in mind, I think it
17 is appropriate that Mr. Lee be allowed to go to work with his
18 father and continue in that regard, and that, if the Court
19 wishes to impose a curfew during which electronic monitoring
20 would be, I guess, on, it should be from 10:00 p.m. to 6:00
21 a.m. And that can be seven days, but that provides, I think,
22 the assurances that the court would need on the one hand and
23 provide Mr. Lee with a certain degree of freedom of movement,
24 which we think the facts of this case certainly permit.

25 There is still no evidence that he would constitute

gaw

1 a danger to this community even given the allegations of this
2 case. And in that regard, I would just note, Your Honor,
3 that -- and again, this is based on the face of the
4 indictment -- the child pornography that is allegedly on his
5 computer is dated 2009 and 2010. It is not -- you know, we are
6 talking about receipt that allegedly happened four years ago or
7 five years ago.

8 THE COURT: Are you talking about the ones that are
9 listed in counts two and three?

10 MR. TREEM: Yes. Yes.

11 THE COURT: Because I guess the allegation is that
12 600 images were found. I don't know if those dates correspond
13 to the whole --

14 MR. TREEM: Well, I would submit, Your Honor, based
15 on what we know, the dates correspond to these two. They are
16 contemporaneous. And so I would submit that there is certainly
17 nothing that we have heard here today which suggests that
18 Mr. Lee received any child pornography at our about or shortly
19 before the time of the search.

20 And so, you know, to the extent that there was
21 receipt and/or possession, it is -- as I say, it is not
22 contemporaneous. And so that, I think, only serves to
23 highlight what we would argue is the very limited scope of the
24 charges. It is one -- and I hate to use the word victim,
25 because I don't consider T.G. to be a victim in the slightest.

gaw

1 But it is just one person and images that were received years
2 ago.

3 And I think in light of that and in light of
4 Mr. Lee's history and lack of criminal history and other
5 criminal conduct, that if the Court is inclined to impose
6 electronic monitoring, that it do it consistent with the curfew
7 that we have asked for.

8 But also let me say, Your Honor, I don't want to
9 give up, and I want the record to clearly reflect that we think
10 that if the Court feels compelled -- we believe that that
11 section is unconstitutional both on its face and as applied.

12 THE COURT: Although I gather you would recognize
13 that if I determined that condition is necessary to address
14 flight and danger concerns, that it would not run afoul of
15 the -- I mean, I can impose electronic monitoring in any case.
16 Right?

17 MR. TREEM: Absolutely, Your Honor.

18 THE COURT: Yes.

19 MR. TREEM: You are right. You are absolutely
20 right. That is true. And I think it is one of the Eight
21 Circuit, maybe it was the Eighth or Ninth Circuit cases that
22 essentially said that. And, you know, we understand that. And
23 we have explained that to Mr. Lee, as well.

24 I just want to put on the record our position in
25 case the Court were to say: I can't even consider any of this

gaw

1 because --

2 THE COURT: I hear you.

3 MR. TREEM: Because I am mandated, I don't have a
4 choice.

5 THE COURT: I understand.

6 MR. TREEM: If the Court will just bear with me one
7 moment.

8 (Pause)

9 MR. TREEM: Unless the Court has any additional
10 questions, we would submit. Thank you.

11 THE COURT: So your proposal is for Mr. Lee to go
12 reside with his parents. --

13 MR. TREEM: Yes.

14 THE COURT: -- in the Silver Spring home --

15 MR. TREEM: Yes, Your Honor.

16 THE COURT: -- and continue to be able to work.

17 MR. TREEM: Yes, Your Honor.

18 THE COURT: Okay. Are there any other aspects of
19 it? So you propose that Mr. Lee's father would be a third-
20 party custodian.

21 MR. TREEM: Yes, Your Honor. And I believe the pre-
22 sentence report reflects, the Pretrial Services report reflects
23 the willingness of the father to do that.

24 THE COURT: Yes, it certainly does.

25 MR. TREEM: And we would ask that. And the only

gaw

1 other thing, Your Honor, I would ask that -- we would hope the
2 Court wouldn't think that electronic monitoring is necessary in
3 this case. But if the Court believes that is so, we would ask
4 that it be limited to, tied to a curfew for Mr. Lee, which
5 would assure that he is home between the hours of 10:00 p.m.
6 and 6:00 p.m., and that the condition the electronic monitoring
7 be set for that time period; that is, that it not be 24/7.

8 THE COURT: Okay.

9 MR. CROOKS: Your Honor, may the Government be heard
10 on conditions?

11 THE COURT: Sure.

12 MR. CROOKS: The first thing I want to address is
13 sort of the assessment of what the indictment portends and what
14 the facts show. First off, I am not sure why the defense has
15 engaged in a question of whether she is a victim or not. I
16 don't see that as -- first off, I don't think we used the word
17 victim in the indictment. But the point is that if these are
18 largely strict liability crimes, and more importantly for Your
19 Honor's consider, T.F., who I think Mr. Treem was referring to
20 as T.G., informed Mr. Lee immediately upon arrival in Florida
21 that she was in fact 16, and it was after that information
22 being provided to Mr. Lee from T.F., that he then posted the
23 ads on back page -- and I think that is an important
24 chronology -- and facilitated her prostitution, it is also
25 after that that he facilitated her return to Maryland. And it

1 is also after that he created counterfeit documents for her,
2 the delivery of which --- in the form of Nino, where he
3 indicated that he knew that her age was that of a minor and
4 that he was hoping to not only commit these crimes, but to
5 portray her as someone that was older than she was, in addition
6 to that, the creation of the photographs.

7 So I just want that to be absolutely clear, because
8 I think that that is an accurate assessment of what the facts
9 as they are alleged in the indictment are.

10 The other factor that I would like to address is the
11 fact that it was just argued or suggested that it is a singular
12 incident involving one individual. While that is true in terms
13 of what the Grand Jury credited and found probable cause to
14 return this indictment, it is also true that on the computers
15 and the hard drive recovered from Mr. Lee's apartment were
16 numerous other females, who were unidentified. Well, I
17 shouldn't speak in absolute terms. There are a couple that
18 were identified, who were just over the age of that of a minor,
19 but others, who were unidentified, in poses and activities that
20 unequivocally constitute pornography.

21 Now, obviously, if they were shown to be minors,
22 there would be obviously a charge commensurate with the one
23 here. So I think it is relevant for Your Honor's
24 consideration, in terms of the community considerations, to
25 know that there are those other photographs, that the agents

gaw

1 are working hard to figure out who those individuals are, and,
2 if they are minors, whether it is determined through a Tanner
3 methodology or from actually identifying those persons, then I
4 am sure the Grand Jury will be asked by my office to consider
5 additional charges. But I think for the immediate concern of
6 the community considerations it is relevant and appropriate for
7 Your Honor to consider that fact.

8 In addition -- and I did a quick sort of conferral
9 with Special Agent Bradley -- it is somewhat arbitrary that
10 images that were chosen to be reflective in the indictment --
11 because as we craft these indictments, we don't lay out all
12 600-plus images. But there were images that were more recent
13 than 2009, 2010, based on the forensic examination that was
14 done not only by the Government's expert, but also as verified
15 and oversaw by an expert that was hired by the defense counsel.

16 So if Your Honor is inclined to put some temporaral
17 weight to that argument, then I suggest that there are more
18 recent downloads that appear, at least forensically, to be
19 acquired in a more recent time period.

20 I think that the concern I have with regard to the
21 Silver Spring third-party custodian, I am not saying that that
22 would not be an appropriate person. I guess I would ask the
23 defense to address the fact that they are saying that the dad
24 does leave for extended periods of time, two, three weeks
25 perhaps. So is there a surrogate that comes in during those

gaw

1 intervals to serve that function, if dad is leaving for that
2 long period of time? And that is also a concern that the
3 Government has.

4 But those are the principal issues, based on things
5 previously --

6 THE COURT: All right. Thank you.

7 MR. TREEM: Can I just address that last point, Your
8 Honor?

9 THE COURT: Yes.

10 MR. TREEM: I think it is somewhat -- it can be, I
11 think, appropriately inferred, and I think it also is true,
12 that the father, Dr. Lee, will adjust his schedule to the
13 commands and requirements of being a third-party custodian, if
14 the Court sees fit to impose that. I mean, that is something
15 that we can manage, I mean he can manage and is willing to
16 manage to --

17 THE COURT: Okay. I mean, generally speaking, my
18 thought on a third-party custodian is that they would not be
19 gone for extended periods of time. And if that was necessary,
20 then perhaps, you know, another third-party custodian might be
21 proposed.

22 MR. TREEM: Well, you know, first of all, I don't
23 think that is going to happen, because I think in speaking with
24 Dr. Lee that he has indicated a willingness to do whatever, as
25 I said, whatever is appropriate to do as a third-party

gaw

1 custodian, if that means being around rather than being away
2 for extended periods of time, then that is what he is prepared
3 to do. That is kind of the short of it.

4 The mother also lives at the residence. The brother
5 also lives close by. And if in fact it becomes an issue in
6 which the father has to leave for extended periods of time, we
7 would certainly advise the Court and request a modification to
8 allow a substitute custodian to be appointed for the duration
9 of the father's absence from the District of Maryland. And
10 there are people who are willing to do that. As I said, the
11 older brother, who is here and works in the family business, as
12 well, as well as the mother.

13 THE COURT: Thank you, Mr. Treem.

14 Thank you for your report, Ms. LaRue. Did you have
15 anything to add?

16 MS. LaRUE: Could I approach?

17 THE COURT: Yes.

18 MS. LaRUE: Thank you.

19 (Whereupon, a Bench Conference followed, which was
20 off the record.)

21 MS. LaRUE: My recommendation obviously is the same.
22 However, I just wanted to say that if the Court is inclined to
23 release the Defendant --- obviously until --- is posted, as
24 well as the location monitoring ---

25 THE COURT: --- come up here, too.

gaw

1 (Whereupon, a Bench Conference follows, which was on
2 the record:)

3 THE COURT: --- at this point --- this issue up here
4 rather than ---.

5 --- is applied --- why detention is not
6 appropriate --- although --- flight concerns and danger
7 concerns causes me to get to --- classified as to the right of
8 detention or to the left of detention. But those strict
9 conditions --- only thing they are just talking about there,
10 because I think there is an incentive to flee hear, I think
11 with the ability to flee. And once --- didn't want to put you
12 on the spot because I didn't know if you had talked with --

13 MR. TREEM: I have not talked to them about any
14 property or surety to be posted. I have not done that. Do you
15 want me to do that?

16 THE COURT: Well, I think we are probably --- put it
17 back on the record at this point. I mean, But right now I
18 am --- 24/7 lockdown. And with the phone in place --- Pretrial
19 doesn't have confirmation that it is an available line right
20 now --- set it up today. And making some property ---

21 MR. TREEM: Okay. Well, then I would -- I mean, I
22 could probably get back to Your Honor on the property, you
23 know, within 24 hours, if not sooner. But the problem is that,
24 you know, I -- I would hope the Court would not be detaining
25 Mr. Lee while we did that.

gaw

1 THE COURT: I am detaining him until conditions can
2 be put in place.

3 MR. TREEM: Oh, Your Honor, that's -- I mean, I have
4 had two cases in which issues like this have come up in the
5 past. And each time the Court --

6 THE COURT: Well --- electronic monitoring.

7 MR. TREEM: Well, okay. But the problem is that he
8 is being detained because we just can't get to it today. There
9 is -- I mean, they can't verify it. The line is there. I mean
10 --- setting it up. It's on Verizon. It is at their home in
11 Silver Spring. And to detain Mr. Lee overnight at the CDF or
12 wherever it is going to be is just totally inappropriate under
13 those circumstances, because it is really just a function of
14 time and the ability of Pretrial to go confirm that that is
15 requiring him to be there.

16 THE COURT: Well, it is what it is --- I am shocked
17 the Government is not seeking detention. I respect that that
18 was a promise that they once made. And I --- but this is one
19 of the worst set of facts I have seen.

20 MR. TREEM: Well, with all due respect, Your Honor,
21 it is not.

22 THE COURT: That is not what I have seen.

23 MR. TREEM: Okay.

24 THE COURT: And, you know, in any other case the
25 Government could ask for detention --- but I think conditions

gaw

1 of release ---

2 MR. TREEM: So then he can't -- an exception to go
3 to work?

4 THE COURT: No. I just said 24/7 monitoring.

5 MR. TREEM: How about going to see me?

6 THE COURT: I think we could talk about all those
7 details --- confront the property issue, because I think --

8 MR. TREEM: Well, give me some idea of what would
9 satisfy you, Your Honor.

10 THE COURT: --- his parents have property they are
11 willing to post. I think that would address it.

12 MR. TREEM: What about a bond, monetary bond,
13 instead?

14 THE COURT: From them?

15 MR. TREEM: Yes.

16 THE COURT: I would entertain that. But Pretrial,
17 of course --- detention.

18 MR. TREEM: I understand that, but that is not --

19 THE COURT: --- willing to set conditions, I would
20 want their input on what the property was. But I am open to
21 that. But I think that--

22 MR. TREEM: But even I attempted that in the next
23 two minutes from Lee what he would be willing to do, that is
24 still not going to release him tonight?

25 THE COURT: Well, I don't know if Pretrial ---

1 Pretrial wants the equipment --- if we want to take a break and
2 see if we can do that, I don't know the availability of a
3 monitoring device in place, so I am happy to take a recess,
4 then ask them to come back and ---

5 MR. TREEM: Well, I would like to know how long that
6 is -- yes, I would like to know how long that is going to take.
7 And I can talk to -- I think that is Pretrial's obligation to
8 let us know how long that is going to take verify and what they
9 have to do about it.

10 THE COURT: --- what was in place. So I think --

11 MR. TREEM: Well, I understand that, and that's
12 fine. It is. I am just representing that. And in the
13 meantime I can talk to Dr. Lee about property and/or a bond of
14 some sort.

15 THE COURT: As I say, I have an open mind. I
16 just ---

17 MR. TREEM: Okay. But I guess what I --

18 THE COURT: I think we should take --- get in place.

19 MR. TREEM: That's fine.

20 THE COURT: So I am happy to take a break from this
21 and take a few other matters. And then we can recall this when
22 you are all ready. I will be here.

23 MR. TREEM: Okay. Fair enough.

24 THE COURT: Do you want the --

25 MS. LaRUE: No ---

gaw

1 (Whereupon, the Bench Conference was concluded.)

2 THE COURT: Okay, counsel. We are going to take a
3 recess from this matter and just come back. And whenever you
4 are ready to address some of the issues that we talked,
5 Mr. Treem, I will be here on other matters.

6 MR. TREEM: Okay. Can Mr. Lee remain here? Because
7 I may need to confer with him.

8 THE COURT: Not while we continue -- I mean, you can
9 confer with him in the marshals' service. But I think they
10 need to bring -- we cannot have more than one person here.

11 MR. TREEM: All right.

12 (Whereupon, a brief recess was taken.)

13 THE COURT: Recall the case of U.S. versus Richard
14 Lee, JFM-14-0002. Just to resume the hearing that we were
15 having on release conditions. Let me -- I am prepared to
16 address some of the things. I gave you a brief comment at the
17 bench as to where I was headed and I know counsel have looked
18 into perhaps some other issues with respect to posting of
19 property.

20 So let me just make the comments that I have to make
21 and then you can tell me what you propose in terms of release.
22 As I said, I read the indictment, I read the pre-trial report
23 and I have heard the argument of counsel and understand that
24 the defense -- that the Government is not seeking detention
25 which they have the right to do and they have not ---.

1 Of course, the Government cannot detain on their own
2 because of risk of danger. I could detain on the basis of risk
3 of flight sua sponte without the Government's motion. And
4 certainly that is something that I considered based on these
5 facts and circumstances. Notably the Government enjoys the
6 presumption in favor of detention with respect to danger and
7 flight.

8 A presumption which is rebuttable by the defense and
9 of course the danger presumption is probably not pertinent to
10 the detention issue. Those factors may bear as to conditions
11 of release. With respect to the flight concerns, I think that
12 Mr. Treem has done a very capable job and very compelling job
13 on behalf of his client arguing that conditions of release can
14 be fashioned to address flight concerns and that there are
15 facts and circumstances present that rebut the presumption.

16 And I think notably the presence and support of
17 Mr. Lee's family, his ties to his family who are local, the
18 fact that he knew about the investigation and is still here
19 some months later, several months later and that he self
20 surrendered today I think are all significant factors. I think
21 pre-trial also has very capably noted the risk of indicia as to
22 flight.

23 And as I said, I think Mr. Treem has addressed each
24 one of them head on and I think that there remains in
25 fashioning conditions of release, concerns that I have both

gaw

1 with respect of flight and danger that cause me to conclude the
2 various significant conditions of release should be fashioned
3 and addressed.

4 And with respect to that, let me just explain my
5 reasoning. Mr. -- and I should have noted too, Mr. Lee has no
6 criminal record and that is of course significant in terms of
7 rebutting the presumption. It also I think causes the Court to
8 be concerned given that the allegations in the indictment
9 appear to aberrant(sic) based on his otherwise clean
10 background. So that causes me some concern.

11 We can all debate what to call the individual named
12 in the indictment, I think Mr. Treem's points are all very well
13 made with respect to the allegations. I think this is a very
14 serious offense. The allegations in the indictment are very
15 substantial. I think the allegations in the indictment clearly
16 establish that while Mr. Lee may not have know that the
17 individual named here, T.F., was a minor at the time that they
18 traveled to Florida, that that was known. It is alleged at the
19 time that Mr. Lee actively engaged in prostituting and
20 including information about that individual on that page as
21 well as additional -- fairly substantial period of time that
22 they continued to interact thereafter.

23 That is a separate offense from the one that this
24 Court often sees and that is the possession of child
25 pornography. And the allegations here is that there was a very

gaw

1 substantial volume of child pornography found, 600 images which
2 in the scheme of what this Court sees is on the high end.
3 Certainly I understand the Government picks and chooses what to
4 put in the indictment in terms of offenses -- in terms of
5 actual pictures.

6 Certainly the ones noted and alleged in the
7 indictment are ones that are significant child pornography. I
8 recognize that those two dates are not perhaps current. I
9 accept the Government's proffer that there is more current
10 information but I think notably that at the time of the search
11 in March of 2013, all of those images had been retained for a
12 period of time and that is significant as well.

13 The penalties involved here are very substantial.
14 The incentive to flee is very great. Particularly for someone
15 who has no prior record. And certainly why I don't penalize
16 Mr. Lee for having the ability or the fact that he has traveled
17 abroad, that is a reality in terms of assessing the risk of
18 flight.

19 The fact that he can and has traveled. I understand
20 the Government has a passport and that is of note to me as
21 well. And so all of those circumstances, while as I said, I
22 concluded that the presumption has been rebutted with respect
23 to flight or all of the facts that I think militate in favor of
24 very stringent conditions of release.

25 Frankly, this is maybe even inconsistent with things

gaw

1 that I have done in the past, which the Government has sought
2 detention. So it is mindful of the fact that Mr. Lee has
3 substantial family ties, responsible individuals available to
4 be a third party custody. That is of note to me as well. That
5 Dr. Lee is willing to act as a third party custodian.

6 I had indicated in the prior hearing to counsel that
7 I did think that the posting of some type of property or bond
8 was appropriate as well given the risk of flight and I don't
9 know if counsel has had the opportunity to look into that.

10 MR. TEEM: I have, Your Honor. But let me just if I
11 might perhaps just add some other I think facts with respect to
12 the Court's comment that -- if I wrote this down, talk about
13 substantial penalties providing the incentive to flee.

14 In addition to Mr. Lee knowing about the
15 investigation, since the time of the search, and the fact I
16 think at one point he got a target letter, so it became
17 actively known to him.

18 THE COURT: Was that before or after the search
19 warrant?

20 MR. TEEM: I think it was just after the search
21 warrant.

22 MR. CROOKS: It was at the time of the warrant.

23 MR. TEEM: The time of the search warrant.

24 THE COURT: That day?

25 MR. CROOKS: It was given to the agents to give to

1 him that day.

2 MR. TEEM: So that day. Okay. In addition to that,
3 this indictment was originally returned I think on January 2
4 and it was sealed while counsel were engaging in some
5 additional discussions. Mr. Lee was aware of that -- that
6 fact.

7 The superceding indictment was returned last week I
8 believe --

9 THE COURT: January 30 according to the copy that I
10 have.

11 MR. TEEM: Right, last week. And Mr. Lee obviously
12 was aware of that. The -- today's date was originally -- was I
13 think was set for -- at some point it was set in and then it
14 was postponed to accommodate the schedules of the officers I
15 believe and maybe one of them was sick -- actually let me
16 retract that.

17 What had happened was we had gotten notice that the
18 Grand Jury was going to return an indictment on a certain date
19 and then was subsequently was revised by Mr. Crooks. And we
20 thanked him for the notice that that date was postponed because
21 the testifying officer was ill and needed to get better.

22 And so there was further delay. Mr. Lee was advised
23 of that. There was ample opportunity knowing the -- knowing
24 what was coming down the pike for Mr. Lee to flee. He didn't.
25 Today was arranged by agreement between me and Mr. Crooks

gaw

1 through a series of e-mails late last week. So Mr. Lee was
2 aware that today was the day.

3 The opportunity to leave existed even if the Court
4 doesn't want to consider the 11 months since the search,
5 certainly was out there as of the 2nd of January and Mr. Lee is
6 here. So I think that is instructive, Your Honor. But in
7 assessing the likelihood of any flight at all -- all right, but
8 with respect to the posting of some kind of a surety if you
9 will, I have spoken to Mr. Lee's father who is willing to post
10 the family home at 2212 Week(sic) Lane in Silver Spring.

11 It has a -- obviously we don't have the
12 documentation in front of us, but Mr. Lee believes that the
13 market value of that home is somewhere in the neighborhood of
14 \$1.3 million. He estimates that there is an existing mortgage
15 of somewhere in the neighborhood of \$200,000. Which leaves --
16 I was not a math major but \$1.1 million potentially of equity
17 in the home.

18 And that is willing to be -- he is willing to post
19 that. I have also been told however, by pre-trial that it is
20 not possible to do whatever it needs to do to verify or
21 otherwise make functional on their end, the electronic monitor.
22 Which the Court has indicated is going to be a requirement of
23 any release.

24 And with that in mind, I would agree reiterate in
25 open court what I said on the record earlier, that I -- well

1 and pre-trial indicated that the reason that it can't be done
2 is because of the hour of the day. There just isn't personnel
3 available in Greenbelt where this would be monitored because of
4 the southern division location, Montgomery County. There is no
5 one available now to do that.

6 And we would urge the Court to reconsider what the
7 Court indicated that the Court was likely to do and that is to
8 hold Mr. Lee overnight. It is -- we would submit Your Honor,
9 that is totally arbitrary. I mean the concern -- I guess
10 implicit of that is that you have some concern that Mr. Lee
11 might flee tonight. That going home with his father and
12 brother, leaving his car here, giving me his car keys and
13 spending the night with his family somehow gives him access to
14 do tonight what he hasn't done for almost a year.

15 There is no evidence to suggest that at all. And I
16 would submit to the Court that, one night in CDF is one night
17 too many. If there is an alternative to that that is
18 reasonable. And we would submit that there is. And so we
19 would urge the Court to one, to accept the posting of the
20 property that Mr. Lee the father is willing to post.

21 Let us know what we need to produce by way of
22 documentation to satisfy the representations that I just made.
23 That there is value in the home that would be available. Allow
24 Mr. Lee to go home with his father and brother to the house in
25 Week Lane tonight to report back as early as the Court's

gaw

1 calendar would permit tomorrow and also to -- that would permit
2 pre-trial to do whatever it needs to do to verify and otherwise
3 make operational the electronic monitor.

4 I -- you know, I -- it just seems to me totally
5 illogical and arbitrary to believe that Mr. Lee has -- there is
6 a risk that he is going to split tonight under those
7 circumstances. He just doesn't have the wherewithal to do it.
8 And he is in a location where people are kind of -- not kind of
9 but people are promising to the Court under potentially pain of
10 contempt if you will, that they will ensure that he is here
11 tomorrow. And so we would ask that you allow that to happen.

12 THE COURT: Just as a practical matter, I actually
13 don't think he would need to come back to Court tomorrow, it
14 would be -- pre-trial would be -- it is only if he is in
15 custody then he would have to come back to Court to be
16 released. But pre-trial is prepared to go attempt to hook up
17 the equipment tomorrow morning?

18 MS. LARUE: That is my understanding, that both of
19 the individuals in the Greenbelt that are specialized in that
20 area will be available tomorrow. I don't know if they will
21 have instructions for the defendant to go to that office first
22 and then they will meet him at the house afterwards.

23 THE COURT: What would you normally do?

24 MS. LARUE: It depends on what specialists prefers
25 to do. So without them being available right now, I can't ask

gaw

1 them what their preference would be.

2 THE COURT: Okay. Mr. Crooks what is your position?

3 MR. CROOKS: Your Honor, I -- as Your Honor has
4 pointed out based on juxtaposing where we stand on this case
5 and similar cases. What we are -- the Government is agreeing
6 to is already a gross anomaly and I think that -- I think -- I
7 already know that there is colleagues for a bit of a jaundiced
8 eye why I am taking the stance that I am agreeing to
9 conditions, I mean, agreeing to release in any conditions.

10 But that being said as a background, I agree with
11 the Court's sentiments that you expressed before we recessed
12 that the prudent thing to do is to make sure that all of the
13 conditions are present that will ultimately be present. And it
14 is not to try to punish the defendant and send him to CDF for a
15 night. That being said, you know, there are countless
16 defendants that I have sent opposite this table that don't have
17 the means and the familial support but the same dynamics are in
18 to play and no exceptions are made for those individuals until
19 the proper conditions are established what the Court would deem
20 fit.

21 And I think in this context, it is fair to -- it is
22 fair to make -- the Court to mandate that those conditions that
23 ultimately we would set are set. And I don't make that
24 cavalierly also. I think that a lot has been made about the
25 time frame but also the nature of the offense. On the

gaw

1 defendant's computer were not just the fabricated documents
2 that are mentioned in the indictment, the -- that is the
3 driver's license.

4 Right after the search warrants, his passport,
5 defense counsel asked for his passport back and I explained to
6 them that we couldn't return that passport because we believe
7 it has an evidentiary value because it did appear that it was
8 also being used as a template for counterfeit document.

9 In addition, it appears that his CPA license and the
10 grades that he earned as a CPA were photoshopped and modified
11 and he changed the grade to having where it appeared that he
12 had failed his CPA, he changed it to have passed it. We saw
13 false graduate degrees that he had created. I am not trying to
14 stack the deck here but I want to say this is someone who has
15 shown the capability. And sometime the net effect of the first
16 arraignment -- I am sorry the first initial appearance where
17 you actually hear the charges that now are pending in light of
18 the fact that we have reached an impasse in the negotiations.

19 Sometimes now the motivation is in place as well.
20 Again it is going to be -- I credit the defense, it might be a
21 very long 12 to 24 hours for the defendant but that is short
22 compared to the time frame that the public has an interest in
23 accounting for which is what we will be the lead up to trial.
24 And I think those are the conditions that the Government is
25 supportive of and we agree that or we advocate for all of those

1 conditions to be in place before the defendant is released.

2 THE COURT: Okay.

3 MR. TREEM: Well, the fact that Mr. Lee has had
4 opportunities that other s may not have had, as of reason to
5 treat him otherwise than what we would argue makes sense here,
6 I find somewhat offensive. But the fact remains that
7 regardless of what might have been on Mr. Lee's computer, he
8 doesn't have it anymore.

9 He won't have access to his parent's computer
10 because that is password protected. He doesn't have the
11 password. To suggest that he is going to be able to some how
12 put together false documents overnight and get out of town is
13 nonsensical. It justifies all logic and reason.

14 We are not asking for the Court to give him free
15 reign. We have made our record on what we think is an
16 appropriate bond condition, the Court has indicated what the
17 Court is willing to do in that regard. EM being 24/7 and we
18 will live with that and maybe we will appeal or not. But we
19 understand that condition.

20 What we are suggesting to the Court now is simply
21 let him go home with his father, to come here to report to you
22 tomorrow. And be released upon pre-trial doing its job
23 tomorrow morning, getting someone to the house or doing
24 whatever it is that they have to do and so advising the Court.

25 That is all we are asking for. It is -- you know,

1 15 hours of free time if you will. And that in light of
2 everything else, doesn't seem to me to be either unreasonable
3 to request nor is there evidence to suggest that it shouldn't
4 be granted. Your Honor, so we would reiterate what we have
5 requested in that regard.

6 But there is one other point that I want to --
7 actually a question. What happens if pre-trial can't get this
8 done tomorrow?

9 THE COURT: Oh, pre-trial will get it done tomorrow.
10 One way or the other. Hopefully somebody in Greenbelt can do
11 it, if not then somebody else will do it. I don't think that
12 is an issue.

13 MR. TREEM: Okay. Okay. Well and the other
14 question is, Your Honor, if the Court is willing to accept a
15 property that we suggested -- what would the Court need to
16 verify ownership and value and need?

17 THE COURT: Let me say first is that I think the
18 property offered is adequate and significant. And obviously
19 Dr. Lee's willingness and I assume perhaps -- is the property
20 held jointly in Dr. Lee and his wife's name? Just -- yes,
21 joint ownership? So they both will need to sign the paperwork
22 for that.

23 But obviously their willingness to post it is
24 significant in my mind in terms of its adequacy. So, I think
25 you know, first you would have to have both Dr. Lee and Ms. Lee

1 sign the bond -- you know, posting the property. I would issue
2 an order to record the agreement to forfeit the property and
3 the land records in Montgomery County.

4 We usually ask that that be done within a couple of
5 days of the hearing here. And typically there has to be some
6 offer of proof of ownership of the property. Be it the deed
7 and I don't now how much -- what evidence -- I have
8 traditionally been flexible in terms of evidence of value on
9 the property. Not everybody has a current assessment. But
10 maybe there was a property assessment and then what is left,
11 a --- reflection of what is left on the mortgage so.

12 Presumably you could put that together with
13 documents that they are likely to have as opposed to having to
14 go create a document. But I -- on that issue I do accept a
15 proffer that there is significant value in the property subject
16 to the confirmation so I think that is adequate.

17 Let me just say, it is certainly reasonable --
18 perfectly understandable why you Mr. Treem would ask for
19 release on Mr. Lee's behalf. And you have noted a number of
20 factors in his favor. Frankly all of what, I think, rebut the
21 presumption in favor of detention and a case that otherwise --
22 say reasonable minds may differ. You may debate the reasonable
23 part of that but minds may differ as to what the conditions of
24 release are appropriate.

25 But the question for me is if the conditions of

1 release are appropriate, then they are appropriate. They are
2 appropriate to be in place. Not 15 hours from now or two days
3 from now or three days from now and it is with very few
4 exceptions, my general practice that if I am setting conditions
5 of release along these lines and this restrictive, that release
6 is not allowed until the conditions are in place. I have every
7 faith that pre-trial is going to make this happen tomorrow.

8 It sounds as though pre-trial got additional
9 information that the phone is suitable, that the conditions
10 have been -- the special features have been removed and I know
11 that Ms. LaRue will make sure that somebody is able to do that.
12 So I am prepared to set conditions of release, go over those
13 with Mr. Lee and Dr. Lee, make sure he understands his
14 obligations. We can get all of the paperwork signed today and
15 then have Mr. Lee brought back here tomorrow for further
16 direction from pre-trial as to whether to go home or have the
17 pre-trial services officer meet with him.

18 And then I think -- I am not sure we need another
19 hearing. Just in terms, the other loose end would be the --
20 having the deed and establishing the general fact of value on
21 the property. And I guess I think probably to obviate the need
22 for a hearing, I would ask pre-trial and the Government to
23 review that documentation together with Mr. Treem and then I
24 will accept that as a general representation by all involved,
25 that there is substantial equity.

gaw

1 I understand that it may not be down to the penny
2 of what we discussed but it certainly sounds as though there is
3 substantial equity in the property. So, Dr. Lee, I am going to
4 make you a third party custodian of your son. And I think
5 there is probably already -- you were already spoken to about
6 what that entails. First and foremost, he would be residing
7 with you in your home on 24/7 electronic monitoring except for
8 leave that is approved in advance. And I am going to go over
9 the details of the release.

10 But in terms of your obligations, you would use your
11 best efforts to make sure that he appears for any future court
12 proceedings, he complies with any release conditions and if he
13 were to violate the release conditions, you would be required
14 to notify the Court immediately. Do you understand that those
15 would be your obligations?

16 DR. LEE: Yes, ma'am.

17 THE COURT: There is a spot for you to sign on this
18 paperwork, I am going to go over what all of the conditions
19 are, if you have any questions for me when I am done, I would
20 be happy to try to answer them for you. If not then there is
21 going to be a spot for you to sign. And as we discussed, I
22 understand that you are willing to post your home in Silver
23 Spring. And so there is paperwork that you will have to sign
24 in that regard and I just want to make sure that you understand
25 what that means.

gaw

1 You are signing an appearance bond -- sir? Yes?

2 DR. LEE: --- documentation ---

3 THE COURT: I am sorry, I can't hear you?

4 DR. LEE: --- option --

5 MR. TEEM: Your Honor, if it makes a difference in
6 terms of Mr. Lee, Jr. being released today, Dr. Lee can give
7 you a check for what would otherwise be the value of the house?

8 THE COURT: I appreciate that offer. It won't
9 change the dynamics today and I am confident that we can get
10 the paperwork tomorrow, so that won't be the posting of your
11 property won't be a holdup for tomorrow in terms of his
12 release. So but what the appearance bond and agreement to
13 forfeit property means is that by posting your property, if
14 your son were to violate any of his release conditions or not
15 appear for either a court appearance or to serve a sentence if
16 the case got to that point, then you would -- the Government
17 would have the right to forfeit your home.

18 And that is the most notable thing that I want to
19 make sure you understand and that you are willing to post the
20 property under those circumstances. Are you?

21 DR. LEE: Yes ---

22 THE COURT: Okay.

23 DR. LEE: --- cash, I can write the check for you
24 or ---

25 THE COURT: Yes, thank you for that offer. It

gaw

1 doesn't change my position. So and I do think the posting of
2 the property is a significant part of the conditions of release
3 that I am fashioning. I may go over those conditions of
4 release with your son and if I could ask you to please listen
5 as well if you have any questions for me when I am done, as I
6 said I would be happy to try to answer them for you. Thank
7 you.

8 Mr. Lee, I am going to release you. The conditions
9 of release are important to understand and comply with for a
10 couple of reasons. Most notably, if you violate your release
11 conditions, you run the very substantial risk that you will be
12 held in custody pending your trial. In addition, you could
13 be -- if you violate your release conditions, you could be
14 prosecuted separately for the violation of your release
15 conditions. And depending on what the nature of the violation
16 were, that could be -- subject you to prosecution for an
17 offense that carries a penalty for up to ten years
18 incarceration and \$250,000 fine just for the violation itself.

19 While you are on release, you are not to violate any
20 Federal, state or local law. You are going to be expected to
21 reside at your parents' home in Silver Spring. You agree to
22 appear for any court appearances. If the case got to the point
23 where a sentence was imposed, you would agree to appear to
24 serve your sentence.

25 Your father is going to be your third party

gaw

1 custodian. You heard me go over his obligations with him and I
2 trust that you are not going to put him in a difficult position
3 of having to notify the Court of any type of violations. You
4 are going to report on a regular basis to pre-trial services,
5 following any reasonable instruction or direction they give to
6 you.

7 As you also heard, your father is going to post --
8 your father and your mother are going to post property -- their
9 home in Silver Spring as -- in support of your release. And
10 you understand that if you violate the release conditions, they
11 run the risk that they lose that home.

12 I understand that your passport is already in the
13 possession of law enforcement. If you have any other
14 passports, you are required to turn them in immediately. You
15 are not to obtain any new passport. You are going to -- as I
16 said, reside at the address that we have approved. You are not
17 to change that unless you get approval in advance from pre-
18 trial services and the Court.

19 Your travel will be restricted to Maryland for
20 purposes of what I am about to get to in a moment. You will
21 undergo any medical or psychiatric treatment or counseling that
22 pre-trial determines is appropriate. You are to refrain from
23 any excessive use of alcohol. You are to refrain from any use
24 or unlawful possession of any narcotic drug or controlled
25 substance unless a doctor prescribes it to you.

gaw

1 And you will submit to any testing or treatment for
2 any type of substance -- controlled substances that pre-trial
3 determines is appropriate. You are going to be placed on
4 electronic monitoring and basically restricted to your
5 residence except for leave approved in advance by pre-trial
6 services.

7 For medical appearances, medical purposes, court
8 appearances, meetings with counsel or other activities that are
9 specifically approved by the Court. You are to refrain from
10 the use of any type of computer system or internet capable
11 device or similar electronic devices at any location and at
12 your parents' home. I understand that they may have computers
13 there, Mr. Treem has represented that those are password
14 protected. Is that true of all of the devices there, Mr.
15 Treem?

16 MR. TEEM: Yes, Your Honor.

17 THE COURT: Okay, so you are not to possess them
18 independently and obviously not to access any of them in the
19 home. You are not to have any contact with any minors unless
20 you are in the presence of either your third party custodian or
21 other individual that is approved by the Court or pre-trial
22 services in advance. Do you understand the conditions that I
23 have gone over Mr. Lee?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And I will let you review these with

gaw

1 Mr. Treem and if you have any questions for me, I will be happy
2 to try to answer them for you.

3 MS. LARUE: Your Honor?

4 THE COURT: Yes?

5 MS. LARUE: Regarding the conditions and you may
6 have said it and I did not hear it, but pre-trial would
7 recommend that he not have any contact with the victim -- the
8 alleged victim or witnesses as well as not possess any --

9 THE COURT: Yes, I didn't say that but yes that
10 should be -- would you mind giving that back to me, Mr. Treem.
11 It is a fairly standard condition, Mr. Lee. You are not to
12 have any contact with the individual identified in count 1 of
13 the indictment or with any potential witnesses in the case.
14 And obviously the Government should share any information that
15 they have in that regard so that Mr. Lee knows who that covers.

16 MS. LARUE: And Your Honor, pre-trial would also
17 recommend that he not possess or view any pornography
18 throughout the pendency of this case. And I believe consistent
19 with what we generally recommend in the Adam Walsh Statute that
20 there is a firearms restriction as well.

21 MR. TEEM: I miss the last --

22 THE COURT: Firearms restriction? Is there any --
23 no possession of any -- so Mr. Lee, you are not to possess any
24 firearm, destructive device or dangerous weapon and you are not
25 to possess any pornography during the pendency of this case?

gaw

1 You understand those additional --

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay.

4 (Pause.)

5 THE COURT: Ms. Larue, I wonder if it makes more
6 sense to do a come up for Mr. Lee to the Greenbelt courthouse?

7 MS. LARUE: I don't know that it makes a difference
8 either way and I don't know what the logistics are behind that
9 as to if that is possible. That may or may not postpone what
10 time he might be released.

11 THE COURT: Say that again?

12 MS. LARUE: That may or may not postpone what time
13 he might be released because if he is taken to CDF tonight,
14 then obviously would need to be transported at some point in
15 time to --

16 THE COURT: Would you prefer that --

17 MR. TEEM: I am sorry I missed the question --

18 THE COURT: The question is whether to bring Mr. Lee
19 back here or to the Greenbelt courthouse? What is your
20 preference?

21 MR. TEEM: I think -- I guess whatever is easiest
22 and faster which I think would be here.

23 THE COURT: That is probably here. Yes, that is --

24 MR. TEEM: I mean, I don't want to get him caught in
25 the switches of the marshals having to --

gaw

1 THE COURT: Then we will just do that. Because I am
2 thinking also that -- well, Dr. Lee is here and able to sign
3 the agreement to forfeit property and his wife is going to have
4 to sign it at some point. I am okay with arranging that
5 through pre-trial. So I don't know what is more convenient for
6 her. She can either come here tomorrow to do it or can do it
7 with --

8 MR. TEEM: I guess it is probably easier if Mr. Lee
9 is going to be in fact be released at the time that his father
10 and mother come here to execute whatever needs to be executed,
11 it is probably easier to do it -- everything here. Can I have
12 a moment?

13 THE COURT: Sure.

14 (Pause.)

15 MR. TEEM: It never works quite as smoothly as one
16 would hope, Your Honor. Mrs. Lee is currently in California.
17 She is not going to be able to get back to Maryland until late
18 tomorrow. I would like to get my client out tomorrow if that
19 is possible. So there are a couple of things that come to
20 mind.

21 If we can whatever documents need to be signed,
22 Mrs. Lee can provide e-mail signatures I am sure, that is kind
23 of one possible alternative. We can have her here on Friday,
24 that is another possibility. I would like my client not to be
25 in jail for a second night.

gaw

1 Third as Dr. Lee has just advised me, he is prepared
2 to give the clerk of the court with a check which -- to kind of
3 cover the time it takes Mrs. Lee to get here. Just as kind of
4 an assurance that she will show up on Friday to execute
5 whatever documents need to be executed.

6 THE COURT: Okay, here is what I would suggest is
7 perhaps we can have pre-trial talk to Mrs. Lee tomorrow and
8 confirm her willingness to post the property. And you can
9 facilitate that Mr. Treem and then make arrangements for her
10 to sign the paperwork by Friday. I don't think it is necessary
11 to have that. I think having the electronic monitoring in
12 place addresses that. So I think that is adequate.

13 MR. TEEM: Should I arrange that through Ms. Larue
14 or through --

15 THE COURT: I would until further notice, I think
16 Ms. Larue is going to be doing this or figuring out who is
17 doing it. So I think she is probably the person to -- we are
18 going to do a come up for tomorrow morning at 9:00 and so that
19 will give you the hopefully plenty of time to get everything
20 squared away tomorrow.

21 And it may be that -- so Mr. Lee, pardon me, Dr. Lee
22 can sign the appearance bond today and then you could probably
23 have Mrs. Lee sign it in Greenbelt, right?

24 MS. LARUE: I would imagine so, Your Honor, as long
25 as we can keep the originals and then send that back to the

gaw

1 Court --

2 THE COURT: Yes, so it may be easier for her to
3 appear in Greenbelt and sign the paperwork there.

4 MR. TEEM: Okay.

5 THE COURT: But I think that is -- as long as we
6 know that she is okay with it. Which I am sure she is, but
7 since this is sort of a new development, I think that is
8 adequate.

9 MR. TEEM: Okay, fine, Your Honor.

10 (Pause.)

11 THE COURT: And Mr. Treem, let me give you also the
12 agreement to forfeit property for Dr. Lee and this is what we
13 will get Mrs. Lee to sign. And you know, the last question I
14 should ask you, is normally once this is signed and I would ask
15 that the agreement to forfeit property which I just handed you,
16 be filed in the Montgomery County records.

17 Given that Mrs. Lee probably won't sign it until
18 Friday, I was going to say that that be done on Monday, the
19 10th?

20 MR. TEEM: Yes.

21 THE COURT: Then I am going to put that -- I will
22 give you a copy of this so that it will be done by the 10th of
23 February.

24 MR. CROOKS: And Your Honor, while they are looking
25 at that, I have an administrative function, which is just I

gaw

1 meant and would like to move to unseal the original indictment
2 which was returned on January 2, 2014.

3 THE COURT: The original indictment?

4 MR. CROOKS: Right.

5 THE COURT: Is it superceding --

6 MR. CROOKS: It is superceding and Your Honor may
7 recall, it is sort of a confusing return, the superceding
8 indictment was unsealed but I think for the way it stands now,
9 the original is sealed, so I am just moving to have that
10 unsealed.

11 THE COURT: Okay, I think you probably also need to
12 file a motion at this point.

13 MR. CROOKS: Okay.

14 THE COURT: But for purposes of this proceeding, we
15 will unseal it and just follow it up with a motion.

16 MR. CROOKS: Okay, great. Thank you.

17 (Pause.)

18 THE COURT: Okay, so Dr. Lee I see you signed both
19 the appearance bond as well as the conditions of release. You
20 understand the conditions?

21 DR. LEE: Yes.

22 THE COURT: And Mr. Lee, I see you have signed the
23 conditions of the release, you understand them as well?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. So again we will do the come up

gaw

1 for tomorrow morning and pre-trial will be in touch with the
2 marshal service and make arrangements and give Mr. Lee
3 direction as to where to go and hopefully by then they will
4 have the name of the person who is going to put the equipment
5 into place tomorrow.

6 MR. TEEM: So he will be brought to the courthouse
7 first?

8 THE COURT: He will be brought here.

9 MR. TEEM: Okay.

10 THE COURT: And typically -- Ms. Larue can tell you
11 more detail. But I think when she goes to the marshal service
12 and says that the conditions are being met and he can be
13 released, that that will happen.

14 MR. TEEM: I mean, either Ms. Levinson or I will be
15 here as well.

16 THE COURT: Yes, you might check -- you don't have
17 to be but obviously you are welcome to but put the 9:00 on the
18 come up, I don't know if he will be here exactly then. That
19 may be optimistic of me, that is an early come up but I wanted
20 to do it as early as possible.

21 MR. TEEM: I appreciate that, Your Honor and I will
22 draw on my past experience to get here at some point --

23 THE COURT: And you can always stop by the marshal
24 service on your way out and ask them whether that is realistic.
25 So -- okay, so I think the only additional issues that have to

gaw

1 be done is have Mrs. Lee signed this paperwork by Friday. Give
2 information to pre-trial about the property ownership and the
3 value. We will give you a copy of all of this including the
4 agreement to post or to file the agreement to forfeit property
5 by Monday.

6 MR. TEEM: And I will have Mrs. Lee get in touch
7 with Ms. Larue.

8 THE COURT: Yes. Okay. Is there anything else?

9 MR. CROOKS: No, Your Honor, thank you.

10 (Whereupon, the hearing concluded.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

gaw

61

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from electronic sound recording of the proceedings in the above-entitled matter.

/s/ Gail A. Williams
Gail A. Williams
Certified Transcriber
Certificate No. CET**D-434

February 19, 2014
Date

/s/ Lisa Contreras
Lisa Contreras
Certified Transcriber
Certificate No. CET**D-474

February 19, 2014
Date